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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

SHANE M. FITZGERALD, Plaintiff and Appellant, v. IP MOBILENET, INC., Defendant and Respondent.	G041003 (Super. Ct. No. 07CC04749) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Peter J. Polos, Judge. Affirmed.

Rosenberg, Shpall & Associates, David Rosenberg and Annette Farnaes for Plaintiff and Appellant.

Gordon & Rees, Christopher B. Cato and E. Sean Arther for Defendant and Respondent.

* * *

Plaintiff Shane M. Fitzgerald sued defendant IP Mobilenet, Inc. (the company), his former employer, seeking damages on several causes of action, including retaliation for allegedly refusing to participate in illegal conduct, wrongful termination in violation of public policy, and breach of an employment contract containing a specified term. The superior court entered judgment dismissing all of plaintiff's claims after granting defendant's motion for summary judgment. Plaintiff appeals, contending the trial court erred in concluding no triable issue of material fact existed on the three causes of action mentioned above. Finding no error, we affirm.

FACTS

Defendant is a 30-person company that designs and manufactures equipment for police and fire departments, including vehicle radios, base stations, network controllers, and associated software products. Plaintiff began working for the company in 1991. His work involved radio frequency (RF) design.

In 2000, and again in 2002, plaintiff resigned from his job, each time returning to defendant's employ at the company's request. On the latter occasion, the parties executed a written employment contract whereby defendant hired plaintiff as its chief scientist. It included a clause declaring, "The term of this [a]greement . . . shall continue for one (1) year." The contract also contained a clause allowing it to "be altered or modified . . . in writing signed by the [p]arties."

In 2005, plaintiff signed a statement acknowledging he had received a copy of defendant's employee handbook. In part, the acknowledgement stated: "I understand and agree that nothing in the Handbook creates or is intended to create a promise or representation of continued employment. Rather, I understand that employment at the Company is at will. This means that employees are free to resign at any time and that the Company has the right to terminate employment at any time, with or without cause, and

with or without advance notice. . . . This at[-]will policy supersedes any and all prior or contemporaneous oral or written agreements, understandings and representations to the contrary concerning my employment with the Company."

In early 2006, Behruz Rezvani, defendant's other RF engineer, took over development of a 700/800 megahertz (MHz) radio using what is described as an up-convert architecture. One problem presented by the use of this radio architecture concerned eliminating "spurious outputs," i.e., transmissions that disrupt other radio or wireless communication channels.

On June 19, 2006, plaintiff sent an e-mail to Eric Tanner, then defendant's vice-president of operations, that he copied to Doron Ben-Yehezkel, the company's chief technical officer, Rezvani, and others. The e-mail stated plaintiff had "recently examined the output spectrum of the 700/800 MHz radio" and concluded it "will not pass the FCC [Federal Communication Commission] specifications for transmitter spurious output and therefore can not [*sic*] be placed into operation in any manner." Plaintiff noted "[i]t is a violation of Federal law to knowingly operate a radio which is non-compliant with the pertinent FCC rules and regulations" and described the 700/800 up-convert radio as involving "a particularly egregious violation of FCC regulations as this is a public safety band and the spurious outputs may indeed affect or induce a life-threatening situation."

Several days later, plaintiff sent a second e-mail to Tanner, copied to Ben-Yehezkel, referring to a recent announcement that "the up-converting radio spurious problems have been solved." Plaintiff wrote that he was "trouble[ed]" by the "methodology [used] to effect the reported solution" and recounted his own prior experiences with up-converting radio architecture. He recommended developing software for compliance testing and using it "on a statistically significant number of radios to ascertain conformance with the applicable FCC rules and regulations." Ben-Yehezkel sent a copy of the e-mail to Rezvani.

On July 21, plaintiff sent an e-mail to Nick Memmo, chairperson of defendant's board of directors, complaining the spurious output problems in the up-convert radio "ha[ve] not been resolved" and the company "ha[s] been shipping radios that do not meet the spurious emission standards imposed by the FCC . . . ." Acknowledging he "was not directly involved" in developing the radio, plaintiff claimed he had "examined the transmitter output spectra from multiple radios (ready to be shipped) that are clearly non-compliant." He again cited the potential penalties for violating FCC rules and regulations and declared "this is not a small problem or a problem to be tolerated . . . ." Finally, plaintiff complained that since he sent his June 19 e-mail "I have been in a vacuum (ostracized is probably a more accurate word)" from the rest of the staff. Memmo sent a copy of plaintiff's e-mail to Tanner and Ben-Yehezkel with a note stating, "[w]e need to make sure everything is FCC compliant." Plaintiff never reported his concerns to a governmental agency.

An independent laboratory named CKC tested the 700/800 MHz up-convert radio and, in September of 2006, certified it to be FCC compliant. However, Tanner admitted in his deposition that defendant shipped some of the radios in May and June 2006, explaining, "There was an extreme amount of pressure both from the customer standpoint—that they needed to get the radios in the field to try to see if they met their requirements, as well as financial pressure on the company. [¶] We made the decision to ship some units early with the expectation that we'd be able to get them back and correct any problems that we were receiving." Tanner also testified defendant subsequently "did recall[] all of the radios[] and had them reworked." The FCC never fined defendant for its actions and, as of February 2008, defendant was still selling the radios.

In November 2006, defendant discharged plaintiff and two other employees, one from the engineering department and another from the company's operations department. Plaintiff then filed this lawsuit.

DISCUSSION

1. Introduction

"The purpose of . . . summary judgment law . . . is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute. [Citations.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 844.)

"The trial court may grant a motion for summary judgment 'if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' [Citation.]" (*Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th 550, 555, quoting Code Civ. Proc., § 437c, subd. (c).) "[I]n moving for summary judgment, a 'defendant . . . has met' his 'burden of showing that a cause of action has no merit if' he 'has shown that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to that cause of action. Once the defendant . . . has met that burden, the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff . . . may not rely upon the mere allegations or denials' of his 'pleadings to show that a triable issue of material fact exists but, instead,' must 'set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.' [Citation.]" (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 849.)

When "the trial court grant[s] a motion for summary judgment, we take the facts from the record that was before the trial court when it ruled on that motion. [Citation.] 'We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained.' [Citation.] We liberally construe the evidence in support of the party

opposing summary judgment and resolve doubts concerning the evidence in favor of that party. [Citation.]" (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037.) "Under California's traditional rules, we determine with respect to each cause of action whether the defendant seeking summary judgment has conclusively negated a necessary element of the plaintiff's case, or has demonstrated that under no hypothesis is there a material issue of fact that requires the process of trial, such that the defendant is entitled to judgment as a matter of law. [Citations.]" (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 334-335, fn. omitted; see also Code Civ. Proc., § 437c, subd. (o)(1).)

2. Retaliation in Violation of Labor Code Section 1102.5, Subdivision (c)

Defendant attacks the trial court's summary judgment ruling on three of the complaint's five causes of action. One is the first cause of action alleging plaintiff's discharge violated Labor Code section 1102.5, subdivision (c).

That statute declares, "An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation." Retaliation claims under Labor Code section 1102.5 "require that (1) the plaintiff establish a prima facie case of retaliation, (2) the defendant provide a legitimate, nonretaliatory explanation for its acts, and (3) the plaintiff show this explanation is merely a pretext for the retaliation. [Citations.]" (*Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1384 [applying same test in whistleblowing action under Lab. Code, § 1102.5, subd. (b)].)

The trial court dismissed this count, holding plaintiff "did not engage in a protected activity," since his "evidence does not establish that he refused to participate in shipping non-compliant radios . . . ." For the same reason, plus the fact "defendant offer[ed] legitimate non-retaliatory reasons for termination" for which "[p]laintiff offered no real evidence to dispute," the court held "pretext cannot be established . . . ." Plaintiff

argues "there is an issue of fact . . . regarding whether [he] refused to participate in illegal conduct and whether such refusal was the reason for his termination."

a. The Prima Facie Case Requirement

The primary issue here concerns the first element. "To establish a prima facie case of retaliation 'a plaintiff must show (1) [he or] she engaged in a protected activity, (2) [his or] her employer subjected [him or] her to an adverse employment action, and (3) there is a causal link between the two.' [Citation.]" (*Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, 138.)

In support of the protected activity requirement, plaintiff cites his status as defendant's chief scientist and as the holder of an FCC radio license, and argues he had "a legal obligation to not be an accomplice to [a] violation of FCC regulations and try to prevent the company from selling a non-compliant radio." But the only allegedly illegal activity shown by the record concerned *shipping* radios before they were tested and certified as complying with FCC regulations. Plaintiff failed to present any evidence or authority for the proposition the engineering department's effort to develop a 700/800 MHz radio using the up-convert architecture violated FCC rules and regulations or any other law. While he questioned whether the development team could overcome the problem of suppressing spurious outputs in a radio employing up-convert architecture, that effort, even if ultimately unsuccessful, did not involve illegal activity. His June 24 e-mail to Tanner even acknowledged "we certainly can do this," and defendant's evidence established it eventually did obtain FCC certification for the radio.

As the trial court recognized, plaintiff worked in the company's engineering department and thus did not assist in shipping products. Furthermore, as for development of the 700/800 MHz up-convert radio, Rezvani supervised the project. Plaintiff's July 21 e-mail to Memmo admitted he "was not directly involved" in the project, and he reinforced this assertion in the written opposition to defendant's summary

judgment motion by acknowledging "the company did not ask him to work on this specific radio . . . ."

Plaintiff contends the phrase "refusing to participate" found in Labor Code section 1102.5, subdivision (c) should be liberally construed. But this argument does not explain how a person working as an engineer for a radio manufacturer would be covered by the statute if the only alleged illegal activity involved the shipment of a product before FCC testing and certification is completed.

Citing a January e-mail he sent to Ben-Yehezkel, submitted with his opposition to the summary judgment motion, plaintiff argues there was evidence the company "asked [him] to participate in the development of the radio." That e-mail referred to a spreadsheet listing "'In band spurs-level.'" Plaintiff commented, "If these are really in-ban spurs, then I'm curious as to how you will obtain type acceptance as these spurious responses must be suppressed . . . . The level of these spurs looks just like the problem we had many years ago." Ben-Yehezkel responded: "Good point. [¶] Can you please raise it . . . in the design meeting?"

As defendant notes, the trial court sustained an objection to this evidence because it was inconsistent with the complaint's allegations. The complaint cited only the June and July 2006 e-mails to support plaintiff's claim that he "alerted senior managers . . . the output spectrum of the 700/800 Up[-]convert Radio operated in violation of Federal laws . . . ." Since "[t]he burden of a defendant moving for summary judgment only requires that he or she negate plaintiff's theories of liability *as alleged in the complaint*[,] [a] 'moving party need not ". . . refute liability on some theoretical possibility not included in the pleadings." [Citation.]' [Citation.]" (*Tsemetzin v. Coast Federal Savings & Loan Assn.* (1997) 57 Cal.App.4th 1334, 1342.) Thus, """[a] motion for summary judgment must be directed to the issues raised by the pleadings,""" and """[t]he [papers] filed in response to a defendant's motion for summary judgment may not create issues outside the pleadings and are not a substitute for an amendment to the

pleadings." [Citation.]' [Citations.]" (*Id.* at pp. 1342-1343.) Consequently, the trial court properly excluded plaintiff's January e-mail.

b. The Causal Link Requirement

The record also supports defendant's claim no causal link exists between plaintiff's complaints about FCC compliance and any adverse employment action against him. While the ostracism plaintiff mentioned fails to constitute adverse employment action (*Yanowitz v. L'Oreal USA, Inc., supra,* 36 Cal.4th at p. 1054 ["a pattern of social slights by either the employer or co-employees cannot properly be viewed as materially affecting the terms, conditions, or privileges of employment"]; *Patten v. Grant Joint Union High School Dist., supra,* 134 Cal.App.4th at p. 1387 ["Minor or relatively trivial adverse actions by employers or fellow employees that, from an objective perspective, are reasonably likely to do no more than anger or upset an employee do not materially affect the terms or conditions of employment"]), his discharge clearly qualifies as such. (*Yanowitz v. L'Oreal USA, Inc., supra,* 36 Cal.4th at p. 1054; *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 178.)

A "'causal link may be established by an inference derived from circumstantial evidence, "such as the employer's knowledge that the [employee] engaged in protected activities and the proximity in time between the protected action and allegedly retaliatory employment decision."' [Citation.]" (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 615.) Defendant presented testimony that, in May 2006, plaintiff's superiors had decided to eventually terminate him due to perceived work performance deficiencies, difficulties in communicating and collaborating with other employees, and an inability to timely complete assigned work projects. But Rezvani, the company's only other RF engineer, testified he took over plaintiff's job responsibilities, including development of the 700/800 MHz up-convert radio, before May and thereafter no one said plaintiff's work was being shifted to him.

In any event, Tanner claimed the "core reason" for terminating plaintiff was "a downturn in [defendant's] business" occurring three-and-one-half months after plaintiff's last complaint about the radio's alleged noncompliance with FCC regulations "that necessitated immediate budget cuts and a reduction in personnel." "[C]ases that accept mere temporal proximity between an employer's knowledge of protected activity and an adverse employment action as sufficient evidence of causality to establish a prima facie case uniformly hold that the temporal proximity must be 'very close,' [Citation.]" (*Clark County School Dist. v. Breeden* (2001) 532 U.S. 268, 273 [121 S.Ct. 1508, 149 L.Ed.2d 509].)

Clark noted delays of three to four months between the employer's knowledge of an employee's action and his or her discharge are generally insufficient to support the existence of a causal link. (*Clark County School Dist. v. Breeden, supra,* 532 U.S. at p. 273; see *Richmond v. ONEOK, Inc.* (10th Cir. 1997) 120 F.3d 205, 209 ["the three-month period between the activity and termination, standing alone, does not establish a causal connection"]; *Filipovic v. K & R Exp. Systems, Inc.* (7th Cir. 1999) 176 F.3d 390, 398-399 [four-month delay too long].) Here, defendant did not immediately terminate plaintiff after he complained about the shipping of non-compliant radios. Rather, it proceeded to have the radio tested and certified and then recalled and repaired the previously shipped equipment. The discharge occurred several months later when defendant laid off plaintiff and two other employees, approximately 10 percent of its workforce, as a cost-cutting measure in response to deteriorating business conditions. In light of this unrebutted evidence, plaintiff's unsupported claim that defendant fired him "[b]ecause of [the]FCC stuff," is insufficient to create a triable issue of material fact. (*Addy v. Bliss & Glennon* (1996) 44 Cal.App.4th 205, 217 [causal link action not established where the defendant presented unrebutted evidence of "legitimate, nondiscriminatory business reasons" for its adverse employment actions against the plaintiff]; *Tarin v. County of Los Angeles* (9th Cir. 1997) 123 F.3d 1259, 1265,

superseded by statute on other grounds as stated in *Leisek v. Brightwood Corp.* (9th Cir. 2002) 278 F.3d 895, 899, fn. 2 [causal link not established where the plaintiff "points to nothing in the record, other than her own conclusory statements, to refute the County's explanations for its decisions"].)

c. Conclusion

A defendant's ability to establish the absence of a single essential element in a cause of action is sufficient to support granting its summary judgment motion. (Code Civ. Proc., § 437c, subd. (o)(1); *Kline v. Turner* (2001) 87 Cal.App.4th 1369, 1373.) Since defendant showed plaintiff cannot establish the first element of his statutory retaliation claim, a prima facie case of retaliation, the trial court properly dismissed this count.

3. Wrongful Termination in Violation of Public Policy

The third cause of action alleged defendant terminated plaintiff in violation of public policy, citing "his age, seniority and salary level, . . . reporting of violations of federal regulations and rightful refusal to participate in said wrongful conduct by the [c]ompany . . . ." The trial court dismissed this count, ruling "[p]laintiff has not identified a public policy that was violated and has presented no real evidence he was discharged because he complained about a violation of public policy." On appeal, plaintiff argues "evidence that he complained about the [c]ompany's violations of FCC regulations" supports reversal of this count's dismissal.

A cause of action under this theory requires a plaintiff to show "'(1) . . . an employer-employee relationship . . . [;] [¶] (2) . . . the termination of [the] plaintiff's employment was a violation of public policy[;] . . . [¶] (3) the termination of employment was a legal cause of [plaintiff's damage]; and (4) [t]he nature and the extent of [plaintiff's damage].'" (*Holmes v. General Dynamics Corp.* (1993) 17

Cal.App.4th 1418, 1426, fn. 8; see also 3 Witkin, Summary of Cal. Law (10th ed. 2005) Agency and Employment, § 243, pp. 312-313.)

The element at issue is whether plaintiff's termination was in violation of public policy. Defendant claims plaintiff's "generic references to 'FCC regulations' and alleged violations of 'FCC regulations'" are not sufficiently specific "to satisfy the burden of establishing a public policy sufficient to support a wrongful termination claim." We disagree.

"[T]o support a tortious discharge claim," a "policy must be supported by either constitutional or statutory provisions[,] . . . be 'public' in the sense that it 'inures to the benefit of the public' rather than serving merely the interests of the individual[,] . . . have been articulated at the time of the discharge[, and] . . . be 'fundamental' and 'substantial.'" (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 889-890, fn. omitted.) "[A]dministrative regulations can support such claims," if the regulations "implicate substantial public policies," i.e., those "designed to protect the public or advance some substantial public policy goal. [Citation.]" (*Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 89-90.)

Given the evidence defendant manufactures radio equipment used by public agencies, the nature of the spurious outputs as described in plaintiff's e-mails, his explanation of the problems spurious outputs can cause if they occur in the field, plus the acknowledgement of defendant's employees that the company's products needed to be FCC compliant, a basis exists to infer the shipment of radios for use by police and fire departments not complying with FCC regulations for spurious outputs involves a substantial and fundamental public policy sufficient to support a wrongful termination in violation of public policy cause of action. Thus, while plaintiff has never identified, either in the trial court or on appeal, a particular FCC rule or regulation that defendant violated, neither the court nor defendant was placed "in the position of having to guess at the nature of the public policies involved, if any." (*Turner v. Anheuser-Busch, Inc.*

(1994) 7 Cal.4th 1238, 1257; see also *Green v. Ralee Engineering Co., supra,* 19 Cal.4th at p. 83.)

The problem with plaintiff's argument is that the only evidence of an FCC violation was, as discussed above, the company's shipment of some 700/800 up-convert radios before an independent laboratory tested and certified the equipment as complying with FCC requirements. Tanner acknowledged the company "had to make the radio meet the FCC requirements" and denied defendant had a policy of shipping equipment before FCC certification. He claimed only that it was "necessary" in this particular situation because the customers "needed to get the radios in the field to try to see if they met their requirements" and because of the "financial pressure on the company."

Plaintiff claims the trial court "was not aware that there was testimony from . . . Tanner, admitting that the [c]ompany knowingly and deliberately . . . shipped non-compliant radios . . . ." This contention misstates the record. When plaintiff's counsel, citing Tanner's testimony, argued defendant had admitted "shipping and selling radios that were not certified and . . . were operating outside the specifications demanded by the F.C.C." at the summary judgment motion hearing the trial judge merely replied, "I don't remember the testimony being quite that way." Since the record reflects defendant merely shipped some radios before FCC testing and certification, which it recalled and repaired, the trial judge's comment does not suggest he was unaware of the scope of Tanner's testimony.

The evidence also reflects defendant's officers and employees agreed with plaintiff's concerns about FCC compliance. Ben-Yehezkel forwarded the June 24 e-mail to Rezvani, noting "FYI . . . ." Memmo forwarded plaintiff's July 21 e-mail to Tanner and Ben-Yehezkel with the comment "[w]e need to make sure everything is FCC compliant." Rezvani testified his job required him "to develop [a] product . . . good enough for the customer[']s . . . specification, and also good enough for [the]

FCC[’s] . . . regulation.” Even Tanner testified everyone at the company was “very concerned about all of this and . . . working as diligently as we could to get FCC approval.”

Plaintiff’s claim defendant never recalled the radios shipped before testing and certification is also contradicted by the record. Tanner explained defendant not only made the pre-certification shipments “with the expectation that we’d be able to get them back and correct any problems that we were receiving,” but also the company “did recall[] all of the radios, and had them reworked.” Ben-Yehezkel corroborated Tanner, claiming Tanner mentioned “having to fix a few radios that he shipped.” The only evidence supporting plaintiff’s assertion is a conclusory statement in his declaration opposing the summary judgment motion, that “[u]p until my termination on November 6, 2006 none of the illegal radios that the company sold had been re-called.” But Rezvani, defendant’s other RF engineer, testified at his deposition that generally if the company’s production department “release [a non-compliant product] . . . they fix it, it’s their business. . . .” He claimed the engineering department would only assist in repairs “[i]f there was a problem[] that the production [department] cannot handle . . . .”

Finally, the trial court also concluded plaintiff failed to present evidence sufficient to create a triable issue of fact that “he was discharged because he complained about a violation of public policy.” To prevail, plaintiff needed to “demonstrate the required nexus between his reporting of alleged . . . violations and his allegedly adverse treatment . . . .” (*Turner v. Anheuser-Busch, Inc., supra,* 7 Cal.4th at p. 1258.) As discussed above, the record fails to reflect the essential nexus between plaintiff’s FCC noncompliance complaints and his discharge over three months later along with two other employees.

Thus, we conclude the trial court properly dismissed the third cause of action as well.

4. Breach of Contract

The complaint's fourth cause of action alleged the parties had an "oral, written and implied-in-fact" contract providing "[p]laintiff would not be terminated without good cause," and that defendant breached it "by discharging [p]laintiff without good cause . . . despite his continued satisfactory performance." In his opposition to the summary judgment motion, plaintiff argued the parties' 2002 written employment agreement "was intended to serve a long-term employment" and was "automatically renewed . . . because no[]one renegotiated any new terms . . . ." The trial court dismissed this count, finding defendant "negated an express, oral[,] [o]r implied in fact contract for continued employment" and plaintiff "was an at[-]will employee" for which "good cause was not required to discharge him," and, in any event, defendant "established good cause." On appeal, plaintiff relies on the 2002 written agreement, which he claims "was renewed for another [one-year] period[] every time it expired."

The trial court properly dismissed this count. Under Labor Code section 2920, "Every employment is terminated by any of the following: [¶] (a) Expiration of its appointed term." Where "[a]n employment[] ha[s] no specified term," it "may be terminated at the will of either party on notice to the other." (Lab. Code, § 2922.)

In 2002, the parties entered into a written agreement stating "[t]he term of this [a]greement shall commence on the date this [a]greement is executed by both parties and shall continue for one (1) year. The term of this [a]greement shall be referred to as the 'Employment Period.'" Nothing in the contract declared it would automatically renew each succeeding year unless the parties modified it. Plaintiff's reliance on a comment in an e-mail the company's then chief executive officer sent him when the parties signed the 2002 contract, stating "we are looking forward to your long[-]term contribution to the company's growth," cannot support an contrary conclusion because the agreement contained an integration clause providing it "contain[s] the entire

agreement of the parties . . . ." But even assuming the written agreement automatically renewed each year, plaintiff's 2005 execution of a document acknowledging in writing his receipt of a copy of the company's employee handbook that also expressly recognized he was an at-will employee modified the terms of the 2002 contract.

Thus, the trial court properly dismissed the fourth cause of action of the complaint.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

RYLAARSDAM, J.

WE CONCUR:

SILLS, P. J.

IKOLA, J.